

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 30, 2005

Cancellation No. 92043900

Omnova Solutions, Inc.

v.

DIE GEM CO., INC., THE

David Mermelstein, Attorney:

On June 1, 2005, respondent filed its answer to the petition for cancellation. Respondent's filing does not indicate that it was served upon petitioner. The exhibits to the answer and part of the answer itself were designated confidential.

Confidential Materials

The following Board rules permit the filing of confidential papers:

Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of § 2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by § 2.120(g).

Trademark Rule 2.125(e).

Anything ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding

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involving an application or registration shall be kept confidential and shall not be made available for public inspection or copying unless otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. When possible, only confidential portions of filings with the Board shall be filed under seal.

Trademark Rule 2.27(e).

To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to § 2.125(e) must be submitted under a separate cover. Both the submission and its cover must be marked confidential and must identify the case number and the parties. A copy of the submission with the confidential portions redacted must be submitted.

Trademark Rule 2.126(d). *See generally*, TBMP §§ 106.03; 120.02, 412.02; 412.04; 502.02(c); 703.01(p) (2d ed. rev. 2004).

As is clear from Trademark Rules 2.27 and 2.125, the records of the Trademark Trial and Appeal Board are considered public records, and are presumed to be open for inspection and copying by the public. Nonetheless, in appropriate circumstances, the Board may issue an order upon motion by the parties, or upon its own motion, that certain filings be kept confidential. No such order has been entered in this case.

As a temporary measure, the Board has treated respondent's papers as confidential. However, in the absence of an appropriate order for the protection of confidential materials, neither petitioner nor the Board are under any obligation to keep respondent's confidences. This

is clearly an untenable situation, since all papers filed with the Board must be served upon the other parties to the proceeding.

Accordingly, the parties are allowed THIRTY DAYS from the mailing date of this order in which to negotiate an appropriate protective order.¹ If the parties are not able to agree to the terms of an agreement, the Board, upon the motion of either party, will consider the imposition of an appropriate order. If no timely response to this issue is received, respondent's submissions will be placed in the public record of this proceeding.

Service and Filing of Papers

As noted, respondent's answer and supporting documents were not served upon petitioner. The Trademark Rules require that all documents (with the exception of the original petition for cancellation) must be served on (*i.e.*, sent to) the other parties to the proceeding. Moreover, proof of such service must be made before the paper will be considered by the Board. "A statement signed by the [party] attached to or appearing on the original paper when filed, clearly stating the date and manner in which service was made will be accepted as *prima facie* proof of service." Trademark Rule 2.119(a). *See generally*, TBMP § 113, *et seq.*

¹ For the parties' reference, the Board has posted a "standard" protective agreement on its website. The parties may wish to use

Pro Se Information

Finally, we note that respondent appears to be appearing in this matter *pro se*. While the Trademark Rules permit parties to represent themselves before the Board, most parties find the counsel of a practitioner experienced in Board practice to be essential to a successful presentation of their claim. Board personnel are not permitted to give legal advice to either party, nor are we able to assist a party in finding an appropriate lawyer.

This proceeding is SUSPENDED pending the parties' response to this order. Dates will be reset, as appropriate, upon resumption of proceedings.

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